

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015080391

ORDER DISMISSING CASE
WITHOUT PREJUDICE FOR
FAILURE TO PROSECUTE

PROCEDURAL BACKGROUND

On August 4, 2015, Student filed a request for due process hearing. Student was represented by his mother. On September 3, 2015, the Office of Administrative Hearings granted the parties' joint request for continuance, setting the prehearing conference for December 7, 2015, and the due process hearing to begin on December 15, 2015.

District filed its prehearing conference statement on December 2, 2015. On December 3, 2015, an OAH staff member telephoned Student's mother because Student had not filed a PHC statement. Mother stated that she would be filing the PHC statement by noon on December 4, 2015. To date, OAH has not received a prehearing conference statement from Student.

The undersigned Administrative Law Judge attempted to convene the telephonic PHC on December 7, 2015, as scheduled. She was initially unable to contact District or its attorney, Patrick Balucan, but was able to reach Mother. Mother informed the ALJ that she had reached an agreement with District. When asked by the ALJ if the agreement was in writing, Mother stated that she would be able to email it to OAH. The ALJ provided Mother with the electronic mail filing address for OAH (SEFilings@dgs.ca.gov) so that Mother could email proof of the agreement to OAH. The ALJ informed Mother that she would attempt again to reach counsel for District and would call Mother back if she did.

The ALJ then telephoned District again and was able to reach Mr. Balucan. The ALJ attempted to reach Mother on the telephone, but only reached voice mail. She left a message for Mother to immediately contact OAH so that the PHC could proceed. Mother did not contact OAH. Mr. Balucan then contacted District staff to determine the status of any settlement reached between District and Student. The information he received was that District had provided a proposed settlement agreement to Mother, but that it had not yet received a signed document from her.

The ALJ attempted to reach Mother multiple times by telephone the afternoon of December 7, 2015. No one answered at either of Mother's telephone numbers of record. Despite numerous voice mail messages being left at the two numbers by the ALJ and OAH staff, Mother did not contact OAH on December 7, 2015, and has not contacted OAH to date.

On December 8, 2015, OAH issued an Order to Show Cause as to why this case should not be dismissed for failure to prosecute. OAH served Student by sending the Order by overnight mail to his address of record. OAH set a telephonic hearing on the Order to Show Cause for 1:00 p.m. on Friday, December 11, 2015.

On December 11, 2015, the undersigned ALJ convened the hearing on the Order to Show Cause. Attorney Patrick Balucan appeared on behalf of District. The ALJ attempted to contact Mother multiple times at both telephone numbers of record. Each time, she only reached voice mail.

APPLICABLE LAW AND DISCUSSION

Under the reauthorized Individuals with Disabilities Education Improvement Act, a due process hearing must be conducted and a decision rendered within 45 days following a 30-day resolution period, after receipt of the due process notice, in the absence of an extension. (Ed. Code §§ 56502, subd. (f), and 56505, subd. (f)(3).)

No one on behalf of Student filed any response in this matter addressing why Student never filed a prehearing conference statement, why Mother could not be contacted on December 7, 2015, why Mother failed to contact OAH at any time between December 7 and today's date, or why Mother failed to file the documentation indicating that she had resolved this matter with District. Additionally, neither Mother nor anyone else representing Student appeared for the Order to Show Cause hearing on December 11, 2015.

Given the short time frames applicable to due process hearings, it is important for all parties to participate in the hearing process, including prehearing conferences. Since Student filed this case, it is his burden to prove the issues he has raised. If the parties have indeed entered into a settlement agreement resolving their issues, it is Student's burden to withdraw his case or seek to dismiss it.

Student has failed to file the necessary prehearing conference statement indicating that he intends to proceed with this case and has failed to file documentation showing that the case has been resolved. Student was given an opportunity to clarify his intentions at a hearing on the Order to Show Cause, but failed to appear. Under these circumstances, where there is no indication that Student is not abandoning his case, dismissal without prejudice is warranted.

ORDER

OAH Case No. 2015080391 is dismissed without prejudice. All hearing dates are vacated.

IT IS SO ORDERED.

DATE: December 11, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings